

REMARKS

This Amendment is being filed in response to the Office Action mailed January 9, 2008, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

By means of the present amendment, claims 1-12 have been amended for non-statutory reasons, such as for better form including beginning the dependent claims with 'The' instead of 'A', and changing "characterized in that" to --wherein--. Such amendments to claims 1-12 were not made in order to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents.

In the Office Action, claims 1 and 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5 of copending Application No. 10/527,868. The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This

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rejection is respectfully traversed, particularly in view of the present amendments to the claims. However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In the Office Action, the Examiner objected to claim 1 for lack of proper punctuation. In response, claim 1 has been amended to add a period at the end. It is respectfully submitted that the objection to claim 1 has been overcome and withdrawal of this objection is respectfully requested.

In the Office Action, claims 1, 4-5, 7-9 and 11 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 6,702,483 (Tsuboi). Claim 2 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Tsuboi in view of U.S. Patent No. 6,473,543 (Bartels). Claim 3 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Tsuboi in view of U.S. Patent No. 6,369,954 (Berge). Claim 6 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Tsuboi in view of U.S. Patent No.

6,081,388 (Widl). Claims 10 and 12 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Tsuboi. It is respectfully submitted that claims 1-13 are patentable over Tsuboi, Bartels and Widl for at least the following reasons.

Tsuboi is directed to an optical device capable of controlling its optical transmittance. First and second liquids 8, 9 that do not mix with each other are sealingly contained in a container in such a state that the boundary therebetween has a predetermined shape. A voltage is applied between these liquids 8, 9 to change the shape of the boundary, thereby changing the quantity of transmitted light traveling through the optical device.

It is respectfully submitted that Tsuboi does not teach or suggest the present invention as recited in independent claim 1 which, amongst other patentable elements, recites (illustrative emphasis provided):

wherein the switchable optical element includes a first fluid, a second fluid, a chamber fluidly connected via two openings of the chamber to a conduit, ... the first fluid substantially filling the chamber in the first mode and the second fluid substantially filling the chamber in the second mode.

These features are nowhere taught or suggested in Tsuboi. Bartels and Widl are cited to allegedly show other features and do not remedy the deficiencies in Tsuboi. Accordingly, it is respectfully submitted that independent claim 1 is allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-13 should also be allowed at least based on their dependence from independent claim 1.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

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In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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April 2, 2008

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